No. 376.

Brief of Harris & Glenn for P. E.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 376.

Elizabeth Nobles, by Her Next Friend, W. W. Baughn,

Plaintiff in Error,

vs.

The State of Georgia,

Defendant in Error.

On Writ of Error to the Supreme Court of Georgia.

BRIEF FOR THE PLAINTIFF IN ERROR.

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"'Due process of law' means law in its regular course of administration through Courts of Justice."—U. S. Sup. Ct.

"Though a man be compos when he commits a capital crime, yet if he becomes non compos after, he shall not be indicted; if after indictment, he shall not be convicted; if after conviction, he shall not receive judgment; if after judgment, he shall not be ordered for execution; for 'furiosus solo furore punitur,' and the law knows not but he might have offered some reason, if in his senses, to have stayed these respective proceedings.—Blackstone, iv, 396.

STATEMENT OF THE CASE.

Elizabeth Nobles was convicted of murder in July, 1895.

On the 23d day of June, 1896, she was brought before the bar of the Superior Court of Twiggs County, the Court where her conviction was had, to receive juegment of death.

During the interval from conviction to sentence legal proceedings were taken in her behalf with which we are not now concerned.

Upon her arraignment to receive sentence, and in response to the usual inquiry from the Court if there existed any reason in law why the sentence of death should not now be pronounced, W. W. Baughn, as her next friend, made a "suggestion upon the record" or a "plea in abatement of judgment" in the form of a motion to the Court, sworn to, and supported by other affidavits, averring that "Elizabeth Nobles is now insane"; and for that reson should not and could not, legally receive judgment of death, the motion praying for a trial before the Court and a jury of the issue thus tendered. The Court nevertheless passed sentence and fixed a date for the execution. Whereupon the same reason, viz: "She is now insane", was urged in exactly the same manner for an abatement of the *execution* and with the same prayer for a trial of the issue tendered.

Both pleas were refused by the Court and in effect were demurred out of court on the court's own motion.

The statute law of Georgia directly applicable to and involved in this controversy is as follows:

* Georgia Code (1882) 4666. *Become insane after conviction:* "If, after any convict shall have been sentenced to the punishment of death, he shall become insame, the Sheriff of the county, with concurrence and assistance of the Ordinary thereof, shall summon a jury of twelve men to inquire into such insanity; and

* The sections of the Georgia Code of 1882 are used in this brief in order to conform to the record which refers to that Code, the Code of 1895 not being completed at the time the record was made.

if it be found, by the inquisition of such jury, that such convict is insane, the Sheriff shall suspend the execution of the sentence directing the death of such convict, and make report of said inquisition and suspension of execution to the presiding Judge of the district, who shall cause the same to be entered on the minutes of the Superior Court of the county where the conviction was had. And, at any time thereafter, when it shall appear to the presiding Judge, either by inquisition or otherwise, that the said convict is of sound mind, the said Judge shall issue a new warrant, directing the Sheriff to do execution of the said sentence on the said convict, at such time and place as the said Judge may appoint and direct in the said warrant, which the Sheriff shall be bound to do accordingly. And the said Judge shall cause the said new warrant, and other proceedings in the case, to be entered on the minutes of the said Superior Court."

Code 4666 (*a*). *Lunatics, how disposed of:* "When any person shall, after conviction of a capital crime, become insane, and shall be so declared in accordance with the provisons of section 4666, of the Code, it shall be the duty of the Judge to certify the fact, and the said convict shall be received into the Lunatic Asylum, there to be safely and securely kept and treated as other adjudged insane persons."

Code 4666 (*c*). *To be hung on recovery:* "If such convict shall recover, the fact shall be at once certified by the Superintendent [of the Asylum] to the Judge of the Court in which the conviction occurred, whose duty it shall be to have the convict removed to the jail of the county in which the conviction occurred, or to some other safe jail, and shall pass sentence either in term, time, or vacation, upon the criminal, which shall be executed by the Sheriff as in other cases."

Both the pleas or motions presented on June 23rd, 1896, the one in abatement of *sentence*, and the other in abatement of *execution*, averred that, as a matter of law, the tribunal established by said section 4666 and the other sections quoted was not a judicial tribunal and did not afford "due process of law" for the determination of the issue presented;

For the reasons that:

This tribunal, as decided by the Georgia Supreme Court, is a mere inquisition and is not a court or judicial tribunal, its proceedings therefore do not take place in any court; no rules of evidence or methods of procedure are prescribed for such inquisition; no proper methods for the drawing, summoning, purging, and empanelling a jury and for the subpœnaing of witnesses by compulsory process, or for the examination of witnesses, are provided; no judge or presiding officer is charged with the function of ruling on evidence tendered or of charging and instructing a jury on the law involved; no method of moving for a new trial or of correcting errors or of reviewing its findings are provided; its proceedings constitute a method not known to the common law for the ascertainment of the facts in issue according to the settled principles of the law of the land; and its proceedings do not take place before a court in the due course of the administration of justice.

The motions each contained the averments, that:

Elizabeth Nobles is now insane, and being insane it is contrary to the policy of the law and is illegal that (in the first motion) sentence of death should be *imposed*, and (in the second motion) that, having been imposed, it should be *executed;* that it is provided by article 14 of the amendments to the Constitution of the United States as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." That "due process of law" means law in its regular course of administration through courts of justice, and that while the states have power to deal with crime within their borders, no state can deprive any person of equal and impartial justice under the law; and that law in its regular course of administration through courts of justice is due process, and unless the same take place through courts of Justice the Constitutional requirement quoted is nullified.

That it is herein specially set up and claimed that Elizabeth Nobles has the right to due process of law, in its regular adminis-

tration through courts of Justice, by virtue of the Constitutional guarantee of the 14th amendment ; that it is essential to due process of law, within the meaning of said Constitutional requirement, that a jury be empannelled on the issue of insanity tendered by the motions and that a trial thereof take place before a Judge of the Superior Court of the State of Georgia, according to the due and regular form of proceedings in the state courts ; that whenever an issue of fact is made in a court of Georgia, the trial thereof is a function of the Superior Court of the county having jurisdiction ; and a trial of the question put in issue by these motions is a function of the Superior Court of Twiggs County in which court Elizabeth Nobles was convicted of murder.

That by the settled principles of the common law the ascertainment of the fact of insanity or sanity at any stage of the proceedings, in the course of a legal investigation, was a function of the trial court, that is to say, of the court having jurisdiction of the crime itself and of the criminal, whether before or after arraignment, before or after conviction, or after convicton and before judgment, or after judgment and before execution, and that the settled and orderly course of precedure was the summoning of a jury and a trial of this issue under the forms of law, by the introduction of evidence under the rulings of the judge of the said court, and whose duty it was to instruct the jury upon the law of the issues involved and to aid them in making a verdict.

Each and all and every one of these proceedings named, and also the court's process for the compelling the attendence of witnesses to testify upon said issue, as well as such other proceedings and process and rights as as usually incident to trials before the Superior Courts of the the state, are essential to due process of law within the meaning of the Constitution of the United States.

The prayers of the motions were for the court to grant such rights as the motions claimed in behalf of Elizabeth Nobles.

The Supreme Court of Georgia affirmed the judgment of the

Superior Court of Twiggs County overruling these motions, holding:

(1) There is no law of force in this State which makes it incumbent upon a Judge of the Superior Court, at the time when judgment is to be entered, or after it has been entered, to allow or order a judicial investigation concerning the mental condition of one against whom a lawful verdict of guilty has been rendered in a capital case, and who has thereby become subject to the penalty of death; nor in either instance is a refusal by such judge to enter upon an investigation of this kind, with or without the aid of a jury, a denial to the prisoner of "due process of law."

(2) Sec's, 4686 et seq of the State Code relating to inquisitions in such matters, are sufficiently comprehensive to cover all cases where the alleged insanity begins at any time after the rendition of the verdict of guilty.

The errors in the judgment of the Supreme Court of Georgia which are here in this Court asserted and relied upon, are sufficiently stated in the assignment of errors filed in the record, and are as follows:

It is contended:

(1) That the Supreme Court of the State of Georgia erred in affirming the judgment of the Superior Court of Twiggs County, in denying to Elizabeth Nobles a trial by a jury in said Court, as a function of the said Court, upon the question of sanity or insanity, at the time when the issue was tendered, and *before* sentence was pronounced, in response to the question as to why sentence of death should not be then imposed upon her.

This judgment of the Supreme Court of the State of Georgia, affirming the judgment of the Superior Court of the County of Twiggs was a denial to Elizabbeth Nobles of due process of law, such as is required by Section I, Article XIV, of the Amendment to the Constitution of the United States; and the Court erred in not holding and deciding that at this stage of the proceedings, before sentence was pronounced, when the issue of insanity was tendered, that it was the duty of the Superior Court of the County of Twiggs, and an essential to due process of law under the above cited Article that the same should be tried and

disposed of under the regular forms of admisitration of justice in the Superior Court in the State of Georgia, where all issues of fact are tried by a jury under the direction of the Court.

(2) That the Supreme Court of the State of Georgia erred in affirming the judgment of the Superior Court of Twiggs County, in denying to Elizabeth Nobles a trial by a jury in said Court, as a function of the said Court, upon the question of sanity or insaity, at the time when the issue was tendered, and *after* sentence was pronounced.

This judgment of the Supreme Court of the State of Georgia, affirming the judgment of the Superior Court of the County of Twiggs was a denial to Elizabeth Nobles of due process of law, such as is required by Section I, Article XIV, of the Amendments to the Constitution of the United States ; and the Court erred in not holding and deciding that at this stage of the proceedings *after* sentence was pronounced, when the issue of insanity was tendered, that it was the duty of the Superior Court of the County of Twiggs, and an essential to due process of law under the above cited Article that the same should be tried and disposed of under the regular forms of administration of justice in the Superior Courts of the State of Georgla, where all issues of fact are tried by a jury under the direction of the Court.

(3) Because the Supreme Court of the State of Georgia erred in holding and deciding that " there is no law of force in this State which makes it incumbent upon a Judge of the Superior Court, at the time when judgment is to be entered, or after it has been entered, to allow or order a judical investigation concerning the mental condition of one against whom a lawful verdict of guity has been rendered in a capital case, and who has thereby become subject to the penalty of death ; nor in either instance is a refusal by such Judge to enter upon an investigation of this kind, with or without the aid of a jury, a denial to the prisoner of " due process of law. "

Plaintiff in error says that it is and was by the settled princi-

ples of the law of the land a right on part of a defendant charged with and convicted of a crime, not to be sentenced if insane, and not to have sentence executed if the same be imposed, and that a judicial investigation of the mental condition of one against whom lawful verdict of guilty has been rendered in a capital case, at the time when sentence is to be imposed is an essential to "due process of law," in ascertaining whether or not said sentence should be imposed, and when imposed, whether or not the same should be enforced, and that a refusal by a Judge to enter upon an investigation of this kind with the aid of a jury or without the aid of a jury, in a denial of due process of law.

(4) That the Supreme Court of the State of Georgia erred in holding that the provisions of the Code of the State of Georgia, relating to inquisitions in such matters are sufficiently comprehensive to cover all cases where the alleged insanity begins at any time after the rendition of the verdict of guilty.

This holding was erroneous because the provisions of the Code relating to inquisitions in such matters are not judicial proceedings, and do not take place before any judicial tribunal ; there is no judge who is to preside and rule upon the law and the evidence ; there is no method of compelling the attendance of witnesses ; there is no provision for a review of the proceedings ; because no jury is empanelled in any Court ; because the trial of this sort of issue is a function of a trial court ; because no rules of evidence nor methods of proceedings are provided, and no methods for the drawing and summoning and empanelling of a jury; because no judge or presiding officer is charged with the duty of instructing the jury; because said proceedings are not known to the common law for the ascertainment of facts involved, and because the Supreme Court of the State of Georgia has held that said proceeding is not a judicial proceeding, but is a mere inquisition from which there is no appeal.

For each and all of these reasons, if the proceedings contemplated by the Code of the State of Georgia are sufficiently comprehensive to cover all cases where the insanity begins at any

time after the rendition of the verdict of guilty, the said proceedings do not afford such due process of law as is required by Section I, Article XIV, of the Amendments to the Constitution of the United States and the holding that there is no other method of procedure under the law of the State of Georgia is a denial of due process of law, within the meaning of said Section I, Article XIV, of the Amendments to the Constitution of the United States.

(5) The Supreme Court of the State of Georgia erred in holding against the Plaintiff in Error upon the ground that it is a right, privilege and immunity of Elizabeth Nobles not to receive judgment or execution while insane, and a denial to her of such trial and proceedings as are judicial in their character, is a denial and abridgment of Elizabeth Nobles' rights, privileges and immunities as a citizen of the United States, within the meaning of Section I, Article IV, of the Amendments to the Constitution of the United States.

(6) Because the Supreme Court of the State of Georgia erred in holding that a refusal to enter upon an investigation of this kind tendered in this case, *without the aid of a jury*, is not a denial to the prisoner of "due process of law."

Plaintiff in Error say that when the suggestion of insanity in bar of sentence is made, that it is the duty of the tribunal having jurisdiction of the case, to ascertain in some mode and manner, either with or without the aid of a jury, the truth of the issue tendered, and that a refusal to ascertain in any manner, is a denial of due process of law, within the meaning of Section I, Article XIV, of the Constitution of the United States.

(7) The Supreme Court of the State of Georgia erred in holding that a refusal to enter upon an investigation into the sanity of the prisoner when about to be sentenced, when the suggestion of such insanity is made, *with the aid of a jury*, is not a denial to the prisoner of due process of law.

Plaintiff in Error says that where according to the settled

procceedings of the State for the ascertainment of matters of fact in the Courts, a method other than a jury is provided, that whenever any issue is tendered involving a question of fact in a case over which a court has jurisdiction, and while it has jurisdiction, it is a denial of due process of law not to ascertain the facts in the ordinary manner provided by the law of the State, and that in this case, a failure or refusal to enter upon an investigation with the aid of a jury was a denial to the prisoner of due process of law.

(8) That the Supreme Court of the State of Georgia erred in holding that it is no denial of due process of law for the Courts of the State of Georgia and for the Superior Court of the County of Twiggs to refuse in any way to pass upon the issue involved, the court holding in this case, that there was no duty of any character whatever upon the Superior Court of Twiggs to investigate the issue at all, either by the Judge alone or by the Judge and jury combined.

(9) The Supreme Court of the State of Georgia erred in not reversing the judgment of the Superior Court of the County of Twiggs denying to defendant an investigation into her sanity, when the same was tendered both before the imposition of sentence and after its imposition, a' d erred in not holding and deciding that the failure of the Superior Court of the County of Twiggs to investigate the issue tendered both before and after sentence was imposed was a denial to Elizabeth Nobles of due process of law, and a denial of a right, privilege and immunity of the said Elizabeth Nobles as a citizen of the United States under Section I, Article XIV, of the Amendments of the Constitution of the United States.

I.

By the common law at any stage of a criminal case, and especially in capital cases, whether before indictment, upon arraignment, during trial, at verdict, prior to judgment, or even in the shadow

of the gallows, the proper suggestion of the present, existing insanity of the defendant as an immunity from further proceedings against him as long as his malady continued, and also a *trial in some way* of the issue tendered at these respective stages, was his *legal right* and was not extended as a mere matter of *judicial grace*. In doubtful cases the issus was always submitted to a jury.

4 Blackstone 24, 25, 396.
1 Hales P. C. 34, 35.
Rex v. John Frith, 22 Howell's St. Tr. p. 310, 317, 318.
Queene v. Goode, 7 Adolp. & Ellis p. 536 and notes.
Regina v. Dwerryhouse, 2, Cox Cr. Law Cases p. 446.
Carr's Tr. Lunatices p. 35.
Buswell on Insanity p. 455 *et seq.*, 457, 461 et seq.
Clark's Crim. Pro. 149.
Bishop's New Crim. Pro. 666, 667.
Russel on Crimes.

The reason of the rule which made it a right: Chilty's criminal Law, 761,; Hales P. C. 34; Freeman v. People, 4, Denio, 20,; Harg. St. Tr. 205.

II.

The common law rule and its methods of application have been incorporated into the state systems.

Freemen vs. People, 4 Denio, p. 9 (N. Y.)
Carr's Tr. Lunatics, p. 35 "By the New York Code", etc.: ib. 45 (lst half of notes); ib. 39 (enumeration of state statutes) and p. 93 n. 2.
Croker v. State, 60 Wis. 556.
State v. Vann, 84 N. C. 723.
State v. Peacock, 50 N. J. Law Rp. 34.
People v. Farrel, 31 Cal. 576 (1 h. n).
Guagando v. State, 41 Tex. (2 & 3).
Commonwealth v. Bucieri, 153 Penn. St. Repp. (last h. n.).
La. Ann. Rps., Vol. 45 p. 696 (1, 2, & 3).
Gruber v. State, 3. W. Va. 699.

III.

This rule obtains in Georgia because the common law is there in force; and the rights and immunities of insane persons, as well as the methods to establish them at least at two of the many stages of a criminal proceeding are there expressly recognized by legislative enactments and codifications and are cumulative of the common law methods. Hence, the denial of the

right by the Judge of Twiggs Superior Court, when the issue was properly tendered in bar of judgment, was a denial of due process of law.

Code s. 3612. *Collateral issues, how tried*: "All collateral issues in the Superior Court, unless otherwise directed by law, shall be tried by a special jury."

Code s. 4296. *Lunatics*: "A lunatic or person insane without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he or she may be charged, x x x."

Code s. 4297. *Idiots*: "An idiot shall not be found guilty *or punished* for any crime or misdemeanor with which he or she may be charged.

Code s. 4299. *Plea of insanity, how tried:* "Whenever the plea of insanity is filed it shall be the *duty* of the court to cause the issue on that plea to be first tried by a special jury, x x x."

Code s. 4673. *Lunacy and insanity*: "No lunatic, or person afflicted with insanity, shall be tried, or put upon his trial for any offense during the time he is afflicted with such lunacy or insanity, which shall be tried in the manner hereinbefore pointed out, where the plea of insanity at the time of offense is filed, and, on being found true, the prisoner shall be disposed of in like manner."

Code s. 4695. *Oath of inquest of insanity*: "On the trial of the question of insanity arising after the person shall have been *Condemned to die*, provided for by s. 4666 of this Code, the following oath shall be administered to the jury, to-wit: "You and each of you, do solemnly swear (or affirm) that you will well and truly try this *issue of insanity between the State and A. B., now condemned to die* and a true verdict give according to evidence. So help you God.""

Code s. 4666. *Become insane after conviction*: Quoted in full, *antea*.

From these Code sections it is concluded:

(*A*) In Georgia the common law method was intended to apply till *after sentence*.

Section 4666, applies only *after sentence*. Why? Because the section itself says "if after any *convict* shall have been *sentenced* to death", etc. True the next section, 4666 (a), uses the word "convicted" in the place of "sentenced" and at casual glance might indicate that this inquisition of s. 4666 would apply as well at the stage after conviction as after sentence, but not so when it is noted that s. 4666 (a) refers for terms back to s. 4666 and must be construed as and with s. 4666. Besides, s. 4666 is a codifica-

tion and has existed is the Digests and Codes of Georgia since about 1823, while s. 4666 (a) *et seq.* were added by legis'ative enactment in 1874 for the sole purpose of adding some necessary appendages to s. 4666 that consequences flowing from its exercise might be provided for. So, we say, the use of the word "convicted" in s. 4666 (a) is legislative carelessness and really means "sentenced".

A further argument is found in the oath which the jurors take when proceeding under s. 4666. This is quoted 4695, *autea*, and uses the expression "here now condemned to die". Sentence condemns, not verdict. A judge condemns with a sentence while a jury only convicts with a verdict. A jury may find a verdict of guilty in a capital case and the prisoner not be "condemned to die" because in some cases the Judge has power to commute the punishment to life imprisonment. A jury may, by recommendation, prevent the death penalty *in all cases*, but the jury cannot, by withholding a recommendation, enforce the death penalty *in some cases*. There is no condemnation to die till the imposition of sentence. So, s. 4695, which prescribes the oath for s. 4666, is further evidence that this inquisition applies only after *sentence*.

And further, it seems reasonably plain from a study of these code sections that the Georgia lawmakers did intend one thing and did not intend another thing; that is, they *did* intend to codify the frame-work of the common law system relating to insanity and leave the completion ot the legal structure to the judicial hand, with no purpose by providing for the assertion of the right at one stage of the proceeding to bar its assertion at another to exclude that which was not expressed; they *did not* intend to destroy the harmony of the system till the stage *after sentence* was reached, when, by the provisions of s. 4666, (the prisoner being then under sentence and out of the presence of the court and there being no further immediate jurisdiction over him—so to express it—as at common law, when only four days intervened between sentence and execution,) the codifiers ousted the Judge

and turned the matter over to the Ordinary, and to the Sheriff who had the prisoner in charge. All for convenience. In other words no change in the common law system was intended till the prisoner left the Court room under sentence of death. From whence, it is insisted, that there was as much right to a hearing on the issue of insanity before the presiding judge and a jury, or without a jury, at the state between verdict and judgment as at the preliminary stage of arraignment where it is made the *duty* of the judge to call a special jury and try the issue.

The judicial hand, then, must take materials from the common law pile and fill in the apparent gap between verdict and judgment.

(*B*) **The issue is one of legal right.**

Can there be any doubt that the assertion of insanity and a trial of the issue thus made is, or ought to be, a right as at common law. Sections 4296, 4297, 4299, 4673 and 4666 give positive recognition, and all the Code provisions viewed together and considered as a system in the light of the common law indicate it strongly. Section 4696 affords a peculiar mark of it: The jurors are sworn just as upon a bill of indictment "to try the issue between the State and A. B." An issue supposes a right. There would be no issue "between the State and A. B.," if A. B had no right and society was the only party concerned in the proceeding.

IV.

The tribunal established by s. 4666 *et seq.* of the Georgia Code (quoted in full, *antea*) is not a judicial tribunal but is a mere inquisition and its proceedings, whatever they may be, do not afford, but do deny, due process of law for the establishment of insanity.

When at the stage beyond judgment, the codifiers lopped off this function from the trial court, it was their duty to intrust it to a substitute competent to exercise the function. Hence the common law method was properly invoked even *after* sentence and its denial was a denial of due process of the law.

Spann v. State, 47 Ga. 549 *et seq.*
Carr v. State, 98 Ga. p. 89 *et seq.*
An elaborate discussion of "due process," Hurtardo v. Cal., 110 U. S. 516 *et seq.*

The test is: not that the citizen's right *may* be obtained by the method established but that the method shall *insure* those rights.

Billings v. State, 43 Am. St. Rps. p. 525 *et seq.* (An important case.)

Section 4666 does not insure attendance of witnesses, impartial jury, presiding judge, etc.—all *fundamental rights* and not *mere forms.*

Within the principle of Brown v. Levee Commissioners, 50 Miss. 468.

Nor is the test: that the codifiers or the legislature have sanctioned s. 4666, that there will be a hearing and that it will operate on all alike, for the *result* will not be due process.

Within the principle of the Chicago B. & Q. R. R. Co. v. Chicago, 166 U. S. 237 *et seq.* and Mr. Justice Brewer's dissenting opinion.

V.

Since the right to set up insanity both before and after judgment, and the immunity from judgment in the one case and execution in the other which its successful establishment would afford, was a fundamental and inalienable right of the prisoner at common law, then the holding that such was not the law in Georgia, that there was no such right in Elizabeth Nobles and no duty upon the Judge of Twiggs Superior Court to allow it, was not only a denial of due process of law, but a denial and an abridgement of her rights, privileges and immunities as a citizen of the United States which the States are inhibited to do.

14 Am. U. S. Const. Sec. 1.
Freeman v. People, 4 Denio, p. 9.

The right to set up insanity is inalienable and is, by implication, part of the Bill of Rights.

Carr's Tr. Lun. p. 44 (n. 1 and citations); ib. p. 70.

It is a right reserved by Art. 9 of the Bill of Rights of the United States Constitution and as much protected as immunity from "search and seizure" according to the principles contended for in:

Spies v. Ill. 123 U. S. p. 131, 151, 152, 153, 166, 180, 181.
Landon's Const. History p. 102, 294-5-6.

At common law the record must show that the prisoner was present and was asked if he had aught to urge against the judgment. Its omission was a denial of "due process of law." How much more important is the right to assert insanity at this stage! How much more essential to due process of law!

Ball v. United States 140 U. S. 119, 129 30-31.
Schwab v. Berggren 143 U. S. 442, 448.

Besides, the prisoner is not *present* in court within the meaning of the authorities, unless his *mental* self is there. The constitutional provisions guaranteeing the right of the prisoner to be present at all stages of the trial is "clearly addressed to his *mental*, even more than to his physical, self." Otherwise the guarantee is a mockery and is mere sound, "signifying nothing."